

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4991 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 2 Yes. Nos. 3 to 5 No.

ARVINDKUMAR M CHOKSHI

Versus

SARDAR VALLABHBHAI SAHAKARI BANK LIMITED

Appearance:

MR MC BHATT for Petitioner

MR CV DUDHIA for Respondent No. 1

No one appears for Respondent Nos.2 and 4
despite service.

Mr.K.G.Patni, Deputy Taluka Development Officer,
Mehmadabad for Respondent No.3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 23/09/97

ORAL JUDGEMENT

Through this Special Civil Application the petitioner seeks to challenge the recovery sought to be made against him at the instance of respondent No.1 i.e. Sardar Vallabhbhai Sahakari Bank Ltd. in pursuance of

the certificate issued by the Registrar of Co-operative Societies, State of Gujarat under section 103 of the Gujarat Co-operative Societies Act.

There is no dispute that the loan was taken from the respondent no.1 Bank by the respondent no.2 i.e. wife of the present petitioner and the petitioner had stood guarantee for repayment of the loan. It is stated in the petition that the notices were repeatedly given for the recovery of the due amount but the loan was not repaid and in all three awards were passed for the said recovery. It is further stated that in all a sum of Rs.6,55,925/- has been paid. It has also been submitted that this amount has not been adjusted against the total claim made by the respondent no.1 Bank under the said three awards. It is not disputed on behalf of respondent no.1 Bank that a sum of Rs.6,55,925/-, has been deposited but Mr.Dudhia has pointed out that rest of the amount remains to be recovered and according to respondent no.1 Bank, amount due to be recovered from the petitioner and his wife respondent no.2 is Rs.17,09,966/-. The debtors did not file any objection against the notices which were issued by the Taluka Development Officer and ultimately when the auction was notified to be held on 15.7.1997, the petitioner filed present Special Civil Application on 11.7.1997. On 14.7.1997 an ex parte ad-interim order was passed in favour of the petitioner directing that the auction may be held but the same will not be finalised and the bidders will be informed accordingly by the concerned Taluka Development Officer. It is pointed out by Mr.Dudhia that since there was stay order passed by this Court and the auction even if held could not have been finalised, the bidders though present did not give any bid and therefore the auction did not materialise.

The only ground which has been pressed by Mr.Bhatt on behalf of the petitioner before this Court at the time of arguments is that the notices with regard to the recovery which were issued by the Taluka Development Officer are not valid. He has argued with reference to section 150 of the Bombay Land Revenue Code read with section 155. There is no dispute that the amount in question could be recovered as arrear of land revenue or as a decree of the civil court and the creditor could choose either of the two modes. While Mr.Bhatt appearing on behalf of the petitioner does not dispute that the recovery could be made as an arrear of land revenue, his contention is that under section 150(d) it could be recovered by sale of the defaulter's immovable property. Under section 155 only the Collector may cause the right title and interest of the defaulter in any immovable

property other than the land on which the arrear is due to be sold.

I have heard learned counsel Mr. Bhatt on behalf of the petitioner and I have also gone through the relevant provisions of the Bombay Land Revenue Code. Under Section 152 of the Bombay Land Revenue Code notice of demand may be issued on or after the day following that on which the arrear accrues and the State Government may from time to time frame rules for the issue of such notices and shall fix the costs recoverable from the defaulter as an arrear of land revenue and direct by what officer such notices shall be issued. The scheme of the Code is to be seen and applied in its entirety. No particular provision can be read in isolation. Once the provision is there that the notice of demand may be issued by an officer directed by the State Government under the rules framed by it from time to time, the Taluka Development Officer could certainly issue such notice of demand in accordance with the rules framed by the State Government for issuing such notices. In the first place there is a presumption of regularity of official acts. Whereas no averment has been made in the body of the petition that the Taluka Development Officer could not issue such notice of demand and that there was no authorisation by the State Government in his favour, this presumption though rebuttable has not been rebutted and the petitioner has not discharged this onus of rebutting the presumption of regularity of official acts. Secondly, the Deputy Taluka Development Officer who is present before the Court has placed the relevant rules and the copies of the relevant portions of the Land Revenue Act as also the resolutions passed by the concerned panchayat. Mr. Bhatt was confronted with the xerox copies of these documents which were produced by the concerned Deputy Taluka Development Officer present in the Court but except referring to section 155 he could not meet the point that Taluka Development Officer could also issue the notice of the demand of the recovery. On the basis of the provisions of law relied upon by the Deputy Taluka Development Officer and the relevant papers produced by him as also the documents as aforesaid it is clear that the notices which were issued by the Taluka Development Officer were not invalid and Taluka Development Officer is authorised for this purpose. Reference may also be made to the Bombay Land Revenue Code (November 1987 publication) edited by Shri C.M. Joshi, Retired I.A.S. wherein at page nos. 57 to 63 it is clearly mentioned that powers with regard to the recovery under the Bombay Land Revenue Code have been given to District Panchayat and District Panchayat can

further authorise the concerned Gram Panchayat/Nagar Panchayat etc. and therefore the authorisation in favour of Taluka Development Officer under the directives of the State Government is clearly discernible in the facts of the present case. Section 155 does give powers to the Collector to cause the right, title and interest of the defaulter in any immovable property other than the land on which the arrears is due, to be sold but that does not mean that the arrears which are sought to be recovered as an arrear of land revenue will have to be recovered by the Collector and Collector alone. The process has to be carried out in accordance with the scheme of the Code itself and on the basis of the material available on record, the notice for the purpose of recovery of the demand cannot be held to be invalid on such a hypertechnical ground which has no basis and which is not at all tenable. Besides this it is clear that the petitioner's wife who had taken loan for which the petitioner stood guarantee and amount of loan have not been paid back in accordance with the agreed terms on which the loan was granted. The petitioner is therefore not entitled to any indulgence by this Court in its equitable jurisdiction under Article 226. The loan had been advanced by a Co-operative Bank and it was taken for the purpose of carrying on business. In para 5(e) a very amazing and interesting averment has been made that the petitioner's wife i.e. respondent no.2 was the principal debtor and the petitioner and she have now fallen apart. This averment does not inspire confidence besides being wholly vague and bald. How and why they had fallen apart when did they fallen apart, and what was the point which precipitated the dispute etc. nothing has been stated and prima facie it appears that such bald plea has been taken only to evade the repayment of the loan. The petitioner and his wife are beneficiaries of the loan for the purpose of business and the loan was advanced out of the funds of Co-operative Bank. In such cases when the parties fail to make repayment of the loan and drag the bank to litigation, it seeks to impinge upon the whole Co-operative movement so as to thwart the very purpose and existence of such Co-operative Bank. The State of Gujarat has been a pioneer State to promote the success of Co-operative movement. Such Co-operative movement and the Co-operative Societies are being dragged to litigation, unfortunately at the hands of those who themselves are the beneficiaries of loans advanced by such Banks. It is a dismal fact that the loan which is running into lakhs of rupees out of the funds of the Co-operative Bank is being sought to be evaded on such hypertechnical and jejune ground. This is yet another reason for not exercising the equitable jurisdiction in

favour of the petitioner.

During the course of arguments a suggestion was made to Mr.Bhatt that atleast a sum of Rs. 5 lakhs which admittedly remained to be paid may be deposited with the respondent Bank and for that purpose a reasonable time may also be granted but Mr.Bhatt under instructions from his client i.e. the petitioner who is present in the Court stated that it will not be possible for the petitioner to deposit even Rs. 5 lakhs. In this view of the matter it becomes all the more necessary that auction must proceed or else the recovery in favour of the respondent Bank will be jeopardised and there is no possibility of recovery otherwise than by auction for the purpose of remaining amount after crediting the amount as aforesaid which has already been paid.

I do not find any merit or substance in this Special Civil Application and the same is hereby dismissed. Notice is hereby discharged and the exparte ad-interim order passed on 14.7.1997 stands vacated.

m.m.bhatt